U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-O-

DATE: APR. 2, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a dancer and choreographer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which require documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). We summarily dismissed the appeal that followed, noting that the Petitioner had not identified any erroneous conclusion of law or statement of fact for the appeal. The Petitioner then filed a motion to reopen and reconsider, asserting that her brief did not arrive due to circumstances beyond her control. After a complete review of the Petitioner's arguments and evidence submitted, we denied the joint motion to reopen and reconsider, concluding that she had not established that she meets at least three criteria.[1]

The matter is now before us on a motion to reopen and reconsider our previous decision. On motion, the Petitioner submits additional evidence pertaining to the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), asserting that she meets three criteria.

Upon *de novo* review, we will deny the joint motion to reopen and reconsider.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). A petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at

[1] Our most recent decision in this matter is *Matter of I-O-*, ID# 1384339 (AAO Jul. 31, 2018).

8 C.F.R. § 204.5(h)(3)(i)-(x). Where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

A motion to reconsider is based on an *incorrect application of law or policy*, and a motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

A. Motion to Reconsider

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy. The Petitioner does not contend that our previous decision was based on an incorrect application of USCIS law or policy as required for a motion to reconsider. Therefore, this motion is denied.

B. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The Petitioner has submitted documentary evidence that was not submitted previously, which we will discuss below.

The record reflects that the Petitioner is a dancer and choreographer. As she has not established that she has received a major, internationally recognized award, she must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In our previous decision, we denied the motion to reopen, holding that the evidence submitted did not demonstrate that the Petitioner met three criteria as required. Specifically, we held that the Petitioner satisfied the judging and display criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vii) but that she did not meet the requirements of the criteria for awards or published material at 8 C.F.R. § 204.5(h)(3)(i) and (iii). Here, the Petitioner submits additional evidence pertaining to the awards criterion.[2]

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

On motion, the Petitioner asserts that she meets this criterion for awards received as a member of the dance group First, she claims that her 2003 performance with this group at the in Syria meets these requirements. She states that her plaque from this event was for participation because "there is no competition for first, or second or third place, or anything of the like." Instead, the Petitioner asserts that performing alone at the historic amphitheater represents recognition of excellence. However, the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires receipt of actual prizes or awards for excellence in the field. Therefore, the Petitioner has not established that she meets this criterion based upon her participation in the

Next, the Petitioner claims that she meets this criterion for receiving the grand prize in the category of dance at the in 2005. She submits the translation of a certificate from this competition with a copy of the original certificate, indicating that the "Grand Prize in the category of dance" was awarded to the children's ensemble Although counsel states that "[t]he prize is nationally recognized," the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence. Here, the Petitioner submits a document that appears to be written by Director of the show agency, about the in 2005.[3] While it claims that the competition is the largest and most famous in the Ukraine, the record lacks evidence corroborating that assertion, such as media coverage. As such, the Petitioner has not demonstrated that the award is nationally or internationally recognized for excellence in the field.

In addition, the document from provides conflicting information about the awards given to the winners of the It states that this contest includes three

[2] The Petitioner also claims that she was a victim of notario fraud in that an individual holding himself out to be an attorney, but who is not actually licensed to practice law, had previously advised her regarding the instant petition.

[3] Near the end of this document, it states, "[i]nformation is provided by . Director of the show agency." We further note that this original letter is a blurred photocopy, which does not comply with 8 C.F.R. § 204.5(g)(1) (requiring ordinary legible photocopies).

phases, a general qualifying round, final round, and the final gala concert in which "[t]he winners of the competition are awarded with gold, silver and bronze medals." However, the Petitioner claims to have received a "Grand Prize" from this competition, an award which does not identify. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The inconsistent evidence in the record does not establish the Petitioner's receipt of an award for excellence from the competition.

The Petitioner also claims to meet this criterion for the competition in 1998, which she states is a Ukrainian television children's competition. In a document signed by the founder and general producer of the competition, He states that this is "not just a competition, but a search for new talents, incredible performances, unexpected images, interesting meetings, positive emotions and new acquaintances," adding that it is "a great opportunity to take the first steps on the professional stage." Further on, states, "[t]he winners of the competition receive an exclusive award – the highest award of the He ultimately concludes, "[t]he winner of the competition in the nomination 'Choreography,' the winner of the in 1998 We note that this is a Ukrainian television competition that provides opportunities for children to gain exposure for their talents, but the record does not provide sufficient evidence to establish that the award the Petitioner's ensemble won constitutes a nationally or internationally recognized award for excellence in the field.

The Petitioner also contends that a diploma received by the ensemble at the n 2008 establishes her eligibility. She submits a document prepared by the producer of the festival In this document, she appears to cite a link about this festival from Facebook which states, "[t]he largest annual festival was founded in 2007 and about 60 collectives take part in it." This document states that the purposes of the festival include the "development of amateur and choreographic art," "attracting the general public and creative intelligentsia to the activities of cultural and education institutions and amateur collectives." The document identifies the jury of the festival as "the leading figures of culture and arts, highly qualified specialists in the field of folk and modern choreography, heads of professional choreographic groups, art critics, specialists in the genre of choreography." In discussing the winners of the 2008 master class the document states, "Diploma of the I stage at the nomination 'Folk dance,' the age category of 10-13 years is given to the exemplary ensemble The Petitioner has not established that this diploma represents an award or that it is for excellence in the field. Thus, the Petitioner has not demonstrated that this represents a nationally or internationally recognized award for excellence in the field, and she has not established that she meets this criterion.

III. CONCLUSION

The motion to reconsider is denied as the Petitioner has not asserted that our prior decision was based on an incorrect application of law or policy. The motion to reopen is denied because the

evidence the Petitioner has submitted does not constitute the required initial evidence of either a qualifying one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has the level of expertise required for the classification sought.

The motions will be denied for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of I-O-*, ID# 2216923 (AAO Apr. 2, 2019)